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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,494	05/31/2001	Hiroyuki Kimura	862.C2248	9063

5514 7590 08/25/2004

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NEW YORK, NY 10112

EXAMINER

BASHORE, WILLIAM L

ART UNIT	PAPER NUMBER
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2176

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/867,494	KIMURA, HIROYUKI	
	<b>Examiner</b>	<b>Art Unit</b>	
	William L. Bashore	2176	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 September 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to communications: original application filed 5/31/2001, with foreign priority filing date of 6/5/2000.
2. Claims 1-26 are pending. Claims 1, 13, 25, 26 are independent claims.

### *Specification*

3. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. The following title is suggested: "Information Processing Method And Apparatus For Adjusting Playback Of Media Using Priority Information".

### *Claim Rejections - 35 USC § 101*

4. **35 U.S.C. 101 reads as follows:**  
  
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.
5. **Claims 13-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

**In regard to independent claim 13**, the combined limitations of claim 13 can be accomplished using a series of manual and/or mental steps (via mental observation of playback statistics, etc.), and is therefore directed to non-statutory subject matter. The examiner's suggestion of amending claim 13 (preamble) to read "*A computer executable information processing method comprising:*", will serve to overcome this rejection.

**In regard to dependent claims 14-24**, claims 14-24 are rejected for fully incorporating the deficiencies of their respective base claims.

In regard to independent claims 25, 26, Applicant's claiming of "*A computer-readable memory which stores a computer program...*", and "*A computer program...*" is directed to non-statutory subject matter.

Computer programs claimed as computer listings per se, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized.

The examiner's suggestion of amending claim 25 (preamble) to read "*A computer-readable memory embodied on a computer-readable medium, which stores a computer program, which when executed, causes a computer to...*", and amending claim 26 (preamble) to read "*A computer program embodied on a computer-readable medium, said program when executed, causes a computer to...*", will serve to overcome these two rejections.

#### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-2, 4-9, 11-14, 16-21, 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Katseff et al. (hereinafter Katseff), U.S. Patent No. 5,822,537 issued October 13, 1998.

In regard to independent claim 1, Katseff discloses a computer apparatus which synchronizes playback of audio and video media streams (pieces of media info.) (Katseff Abstract, column 2 lines 45-52,

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Figures 5, 10; compare with claim 1 “*An information processing apparatus comprising: playback means for playing back a plurality of pieces of media information;*”).

Katseff discloses placing audio and video data into respective audio and video buffers. Katseff's apparatus monitors the playback status of a media presentation by monitoring said audio and video buffers with respect to threshold values. Katseff also discloses a “Playback Speed” scrollbar allowing a user to monitor the frame speed of a presentation (“adaptive control algorithm”) (Katseff Abstract, column 2 lines 45-52, Figure 5, 10, especially Figure 10 item 1000, also column 15 lines 15-25; compare with claim 1 “*monitoring means for monitoring a playback status of the plurality of pieces of media information in said playback means;*”).

Katseff discloses a workstation with a memory for storing instructions, data, etc. (Katseff Figure 1 items 15, 18). With each presentation session, Katseff assigns a higher priority to the audio stream and a lower priority to the video stream (priority information), therefore the video data stream is reduced accordingly (Katseff Abstract, column 2 lines 45-65, Figure 10; compare with claim 1 “*storage means for storing priority information representing priorities of the plurality of pieces of media information*”).

Katseff discloses a, “adaptive control algorithm” which dynamically varies the rate at which video frames are retrieved. Katseff limits the video playback based upon the monitoring of audio and video buffer thresholds during playback, while maintaining audio priority (Katseff Figure 10, column 2 lines 45-64, column 15 lines 15-45, especially lines 15-25, 30-35, and 38-45; compare with claim 1 “*limiting means for limiting playback of the media information in said playback of the media information in said playback means on the basis of a playback status monitoring result of said monitoring means and the priority information.*”).

**In regard to dependent claim 2,** Katseff discloses an apparatus whereby designated priorities have been applied to various media (higher priority to audio data, lower priority to video data) (Katseff column 2 lines 52-55, column 15 lines 9-15).

**In regard to dependent claims 4, 5,** Katseff discloses that during times of extreme network congestion, gradually reducing video retrieval rate from optimal, to zero frames per second (video playback is stopped) (Katseff Figure 10 items 1015, 1025).

**In regard to dependent claim 6,** Katseff discloses gradually increasing video and audio data retrieval to normal (optimal) rates, once their respective buffers are stabilized (Katseff column 16 lines 5-10, 37-45)

**In regard to dependent claim 7,** Katseff discloses a pair of media types (audio and video). Initially, priorities are set so that video retrieval is reduced while keeping audio the same. If video is reduced to zero frame rate (and congestion is still present), then priorities shift, resulting in reduced audio playback until buffers are restored (Katseff Abstract, column 2 lines 45-64, column 15 lines 30-35, 45-51, 55-67)

**In regard to dependent claim 8,** Katseff discloses in times of network congestion, the monitoring of audio and video buffers reveal a drop below desired threshold values, indicating data is not arriving at a workstation from the server as fast as it is being presented to a user (during an optimal predetermined period of time of display). Katseff's monitoring of said buffers is a way to monitor congestion (i.e. whether data is arriving fast enough to keep up with display) (Katseff column 15 lines 28-30).

**In regard to dependent claims 9, 12,** Katseff discloses that during times of congestion (video data is not arriving fast enough to keep up with an optimal predetermined time period of video display), the video frame playback rate is gradually reduced, while audio is unaffected (said video assigned a lower priority by Katseff) (Katseff column 15 lines 25-37). It is noted that gradual lowering of video frame rate (frames/seconds) results in choppy (low quality) display.

**In regard to dependent claim 11**, Katseff discloses reduction of video frame rate. If video frame rate reduces to zero, then the audio (assigned higher priority) is also reduced. When buffers stabilize, the audio is first increased, then the video frame rate increases (Katseff column 15 lines 45-65, column 16 lines 7-10, 37-45).

**In regard to independent claim 13**, claim 13 reflects the method comprising computer readable instructions used for implementing the apparatus as claimed in claim 1, and is rejected along the same rationale.

**In regard to dependent claims 14, 16, 17, 18, 19, 20, 21, 23, 24**, claims 14, 16, 17, 18, 19, 20, 21, 23, 24 reflect the method comprising computer readable instructions used for implementing the apparatus as claimed in claims 2, 4, 5, 6, 7, 8, 9, 11,12 respectively, and are rejected along the same rationale.

**In regard to independent claim 25**, claim 25 reflects the computer program product comprising computer readable instructions used for implementing the apparatus as claimed in claim 1, and is rejected along the same rationale.

**In regard to independent claim 26**, claim 26 reflects the computer program comprising computer readable instructions used for implementing the apparatus as claimed in claim 1, and is rejected along the same rationale.

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***Claim Rejections - 35 USC § 103***

8. **The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claims 3, 10, 15, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Katseff, as applied to claims 1, 9, and 13, 21 above, and further in view of Washington Post review, "Screen Shots" (hereinafter Screen Shots), section: Style Plus, The Washington Post, Washington D.C., January 29, 1999, accessed via ProQuest Direct, pages 1-2.**

**In regard to dependent claims 3, 10, Katseff teaches a GUI embodiment as shown in Katseff Figure 5. Although Figure 5 item 530 shows two display levels ("FRAME/SEC" and "MBLT/SEC" on right hand side of video) without slider bar control knobs (as compared to item 540 and 550), Katseff does not specifically teach what bearing these levels have on indicating limiting of playback (i.e. indication of buffering or net congestion messages). However, Screen Shots teaches RealPlayer G2, whereby during times of congestion, RealPlayer displays "net congestion" warnings to the user, in response to the video stutter (playback is limited due to network congestion). It would have been obvious to one of ordinary skill in the art at the time of the invention to apply Screen Shots's RealPlayer warning message to Katseff's Figure 5 panel, providing a user of Katseff the benefit of such warning message, therefore aiding in a user's informed decision to either continue or quit and try later when the congestion clears up.**

**In regard to dependent claims 15, 22, claims 15, 22 reflect the method comprising computer readable instructions used for implementing the apparatus as claimed in claims 3, 10 respectively, and are rejected along the same rationale.**



*Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Mendelson et al.	U.S. Patent No. 5,754,783	issued	05-1998
Baumgartner et al.	U.S. Patent No. 5,642,171	issued	06-1997
Chang et al.	U.S. Patent No. 6,715,126	issued	03-2004

Shibata, Y. et al., Media synchronization protocols for packet audio-video system on multimedia information networks, IEEE System Sciences, Volume 2, pages 594-601, January 3-6, 1995.

Lamont, L. et al., Synchronization of multimedia data for a multimedia news on-demand application, IEEE Journal, Volume 14, Issue 1, pages 264-278.

Rubin, Jeffrey H., RealPlayer Plus G2 means faster video, Network Computing, Manhasset, Volume 9, Issue 16, accessed via ProQuest Direct, pages 1-2.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Bashore whose telephone number is (703) 308-5807. The examiner can normally be reached on Monday through Friday from 11:30 AM to 8:00 PM EST. Please note that on or about the month of October 2004, the examiner's telephone number will transition to (571) 272-4088.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Feild, can be reached on (703) 305-9792.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

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**12. Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

**(703-872-9306)** (for formal/after-final communications intended for entry)

**Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive,  
Arlington, VA, Fourth Floor (Receptionist).**



William L. Bashore  
Patent Examiner, AU 2176  
August 20, 2004